Supreme Court, U. S.
FILED
NOV 26 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-6531

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,
vs.
RICHARD BERT MOSLEY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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Now Comes William L. Cahalan, Prosecuting Attorney in and for the County of Wayne, State of Michigan, by Patricia J. Boyle, Chief Appellate Attorney, and Thomas M. Khalil and Robert A. Reuther, Assistant Prosecuting Attorneys and prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Michigan entered in the above-entitled cause on August 28, 1974.

OPINIONS BELOW

The opinion of the Michigan Court of Appeals, Division I, is reported at 51 Mich App 105; 214 NW 2d 564 (1974), and is appended as Appendix "A." Application for rehearing by the Petitioner in the Michigan Court of Appeals was denied on March 11, 1974, and said order is appended as Appendix "B." Application for leave to appeal to the Michigan Supreme Court by the Petitioner was denied on June 27, 1974, and said order, entered on June 28, 1974, 392 Mich 764, is appended as Appendix "C." Application for rehearing of the denial of leave to appeal was denied on August 28, 1974, and said order is appended as Appendix "D."

STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered January 14, 1974. Application for rehearing was denied on March 11, 1974. Application for leave to appeal to the Michigan Supreme Court was denied on June 28, 1974. Application for rehearing was denied on August 28, 1974, the date Petitioner exhausted his state remedies. The jurisdiction of this court is invoked under 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED

I.

Whether and under what circumstances a defendant may waive his Miranda rights subsequent to an election to remain silent.

II.

Whether a defendant's election to remain silent *vis a vis* one crime, robbery, precludes the waiver by him of his Miranda rights *vis a vis* another crime, murder, when the investigation regarding these crimes is being conducted by two separate bureaus of the same police department.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision which the present petition involves is the Fifth Amendment to the United States Constitution which provides as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense or be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF FACTS

Defendant, Richard Bert Mosley, was convicted of the First Degree Murder of one Leroy Williams. Certain admissions made by defendant after he was arrested were used against him at trial.

Defendant was arrested at 1:05 P.M. on April 8, 1971 in connection with certain robberies that had occurred on Detroit's lower east side (Ev. H. 12).[1]

Detective Cowie of the Armed Robbery Bureau informed defendant of his Miranda rights on the fourth floor of Police Headquarters after he was arrested. Defendant signed a Constitutional Rights Certificate of Notification acknowledging the giving of those rights, and he stated that he completely understood his rights (Ev. H. 12, 18-20, 72, 78).

Detective Cowie talked with defendant for only twenty minutes and the questioning ceased when defendant declined to talk about the robberies. At no time did defendant ever request an attorney pursuant to the rights contained in the Miranda warnings (Ev. H. 20, 22, 78).

Detective Cowie terminated the questioning *vis a vis* the robberies at about 4:00 P.M., whereupon defendant was taken to the ninth floor cell block and was not seen further by Cowie (Ev. H. 24).

Thereafter, at about 6:20 P.M. the defendant was taken from the ninth floor cell block to the fifth floor Homicide

[1] References prefaced by Ev. H. refer to the pages in the pretrial evidentiary hearing held to determine the admissibility of defendant's admissions.

Bureau by Homicide Detective Gilbert Hill (Ev. H. 82, 87). Detective Hill saw defendant to interrogate him regarding the robbery-murder of one Leroy Williams (Ev. H. 82). At that time defendant was advised a second time of his Miranda rights by Detective Hill. Defendant again indicated that he understood his rights and at no time requested counsel (Ev. H. 89-108). Defendant executed a second signed Miranda Rights form (Ev. H. 90-94). Defendant thereafter made admissions that implicated him in the murder of one Leroy Williams (Ev. H. 94-95).

Defendant testified at the pretrial evidentiary hearing concerning his admissions and admitted that he had signed the Miranda Rights form. He also stated that he read his rights prior to signing the notification form. Defendant also admitted that, indeed, Detective Hill had explained to him the five points in the Miranda Rights form prior to his signing same (Ev. H. 150).

Defendant also stated that the reason he confessed was due to the fact that Detective Hill told him a co-felon had put all the blame on defendant (Ev. H. 152-154) and not because he was forced to or because he did not understand his rights or because he had been denied an attorney.

The trial judge held the admissions admissible and they were used against him at trial.

Defendant's conviction was reversed by a three-judge panel of the Michigan Court of Appeals, Division 1, under date of January 14, 1974. The opinion of the Michigan Court of Appeals is reported at 51 Mich App 105; 214 NW 2d 564 (1974). The Michigan Court of Appeals found that defendant was in fact twice apprised of his Miranda Rights by the two detectives involved in the case.

However, the Michigan appellate court held that, based on the dictates of *Miranda* v *Arizona*, 384 US 474 at 473-474; 76 S Ct 1602 at 1627-1628; 16 L Ed 2d 694 at 723 (1966), interrogation of defendant in this case should have ceased when defendant declined to answer Detective Cowie's questions. The Michigan court also held that the interrogation in this case violated the dictates of Mirandas' companion case, *Westover* v *United States*, 384 US 494; 86 S Ct at 1638; 16 L Ed 2d at 735 (1966); *People* v *Mosley*, 51 Mich App 105, 107-108, 214 NW 2d 564 (1974).

The Petitioner then timely filed an application for rehearing under date of February 1, 1974. Said application for rehearing was denied by the Michigan Court of Appeals on March 11, 1974.

The Petitioner, thereafter, timely filed an application for leave to appeal to the Supreme Court of the State of Michigan under date of March 29, 1974.

The Supreme Court of Michigan denied the application for leave to appeal, six of the seven justices sitting, on June 28, 1974. One justice dissented from the denial of leave to appeal at 392 Mich 764.

The Petitioner then timely filed an application for reconsideration of the application for leave to appeal under date of July 17, 1974. Said application for reconsideration was denied under date of August 28, 1974.

REASONS FOR GRANTING THE WRIT

The questions presented by Petitioner are substantial Federal Constitutional issues which have yet to be addressed by this Court and which have been erroneously answered by the courts of Michigan. The within Petition presents precisely and unequivocally the questions of whether a defendant may subsequently waive his right to remain silent after initially invoking it; and whether the invocation of the right to remain silent regarding one crime, robbery, precludes waiver of that right regarding another crime, murder.

The facts contained in the record are, on the points raised in this petition, not in dispute. The questions raised herein are solely questions of law, thus presenting this court with an excellent record upon which to decide the significant questions posed by Petitioner.

The Michigan courts held that despite the fact that defendant was informed of his Miranda rights prior to the questioning by the two detectives, *no* questioning should have been initiated subsequent to defendant's invocation of his right to remain silent—irrespective of the repetition of the Miranda rights and the second waiver, and irrespective of the fact that defendant did not request counsel.

Such a holding, the Petitioner claims, is in direct conflict with the Miranda rule and the dictates of *Westover v United States*, 384 US at 494; 86 S Ct at 1638; 16 L Ed 2d at 735 (1966), a companion case to Miranda.

The Miranda rule, the Petitioner maintains, does not and should not preclude the police from questioning a sus-

pect who has knowingly and intelligently waived his constitutional rights.

The fact that a defendant previously chose to remain silent does not and should not *ipso facto* lead to the conclusion that that defendant can never subsequently waive his Miranda rights. The Michigan courts, however, have reached that result through an erroneous application of the Miranda rule to cases such as the instant one.

The proper reading of Miranda, the Petitioner asserts, permits a defendant to indeed waive his rights, previously invoked, as long as said rights are knowingly, intelligently, and voluntarily waived. Such a conclusion is provided for in the Miranda case itself. *Miranda v Arizona,* 384 US 474, 475; 86 S Ct 1602, at 1628; 16 L Ed 2d 694 (1966).

Moreover, the Michigan courts, in reliance on *Westover* v *United States, supra,* held that the second interrogation by Detective Hill of the Homicide Bureau was not permissible since defendant had not been removed in time or place from the surroundings of Detective Cowie's interrogation, irrespective of the fact that the second inquiry was in regard to a separate crime—murder—and irrespective of the fact that Detective Hill first advised defendant of his rights and defendant signed a waiver of his rights.

Such a result, the Petitioner claims, offends the rules of *Miranda* and *Westover* and is erroneous on its face.

In *Westover* no warnings were given to the defendant therein by the local police prior to his being questioned by the F.B.I. and no evidence of any waiver of constitutional rights was proffered. The instant case does not fall within the rule of *Westover* and therefore the holding of the Michigan courts is not in accord with the decision of this Court.

Indeed, fact situations such as the instant one are specifically allowed for in *Westover* where it is stated that

> "We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them." 384 US at 496.

The Petitioner also claims in this Honorable Court that the holding of the Michigan tribunals effectively prevents a metropolitan police department from interrogating a defendant concerning separate and distinct crimes, if the defendant initially invokes his right to remain silent as to the first crime, irrespective of the giving of additional warnings regarding a second crime, and irrespective of a knowing, intelligent and voluntary waiver of his rights. That a metropolitan police department could not question the instant defendant concerning separate crimes, even when appropriate warnings were given, is not within the contemplation of *Miranda* and *Westover,* the Petitioner claims.

CONCLUSION

It is respectfully submitted that for the reasons outlined above, the decision of the Michigan courts is in conflict with the Miranda and Westover rules laid down by this Court such that plenary review should be granted in this Court and Petitioner's request for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

OPINION OF THE MICHIGAN COURT OF APPEALS, DIVISION I

(People of the State of Michigan, v Richard Bert Mosley)
(No. 14318)

(Filed January 14, 1974)

Before: Danhof, P.J., Fitzgerald and Walsh, JJ.

Danhof, P.J.

Defendant was charged in a one-count information with the offense of murder in the first-degree committed during the perpetration of a robbery. MCLA 750.316; MSA 28.-548. From a jury verdict of guilty as charged, and from a mandatory sentence of life imprisonment, defendant appeals. We are compelled to reverse.

Of the many issues raised by defendant on appeal, we find one dispositive. Prior to trial, defendant moved to suppress as evidence in the case a statement taken by police from defendant on the date of his arrest. This statement was reduced to writing and signed by defendant. The statement thoroughly implicates defendant in the death of one Leroy Williams. As evidentiary hearing was had and defendant's motion to suppress was denied. At trial, the statement was admitted into evidence and read to the jury.

By *People* v *Robinson,* 386 Mich 551; 194 NW2d 709 (1972), we are required to examine the entire record and make an independent determination on the issue of voluntariness. Our review of the record of the *Walker* hearing

in the instant case reveals that defendant was arrested by Detroit police officers without a warrant at approximately 1:05 p.m. on April 8, 1971. At approximately 2:15 p.m., Officer James Cowie began questioning defendant on possible involvement in a series of robberies that had occurred on the city's lower east side. The testimony of Cowie reveals that defendant was informed of his rights in conformity with *Miranda* v *Arizona,* 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). According to Cowie, defendant did not request counsel, but did decline to answer "any questions about the robberies." Thereafter the interrogation of defendant ceased for a time and defendant was handed over to Sergeant Gilbert Hill for further questioning.

Sergeant Hill testified that defendant was again informed of his rights, but that defendant did not request counsel. Hill questioned defendant on his involvement in the robbery-murder of Leroy Williams and defendant denied being implicated. However, when confronted with the statement of an accomplice implicating defendant, defendant confessed at approximately 6:30 p.m. on April 8, 1971.

When defendant declined to answer Cowie's questions, thus indicating that he wished to exercise his Fifth Amendment right to remain silent, the interrogation should have ceased:

> "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege

> cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked." *Miranda, supra,* 384 US at 473-474; 86 S Ct at 1627-1628; 16 L Ed 2d at 723.

In referring to the above language at the *Walker* hearing, defense counsel argued that *Miranda* cannot be circumvented by the simple expedient of shuttling a person from one police officer to another for purposes of questioning and thus justifying subsequent interrogations after an election to remain silent. We agree.

The people argue that defendant was arrested initially for unrelated crimes and that he was not questioned by Officer Cowie on the death of Leroy Williams. This may be true, although Cowie testified that defendant was arrested following an anonymous phone call which specifically implicated him in the death of Leroy Williams as well as other robberies. The fact remains that prior to arraignment, *and without being removed in time or place* from the surroundings of Cowie's interrogation, defendant was questioned further by Sergeant Hill after defendant had indicated to Cowie that he wished to remain silent. That this practice is not permitted is made clear by the companion case in *Miranda, Westover* v *United States,* 384 US at 494; 86 S Ct at 1638; 16 L Ed 2d at 735.

Reversed and remanded for new trial with instructions that defendant's confession be suppressed as evidence.

APPENDIX B

ORDER OF THE MICHIGAN COURT OF APPEALS DENYING APPLICATION FOR REHEARING

(State of Michigan—Court of Appeals)

(Filed March 11, 1974)

At a Session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 11th day of March in the year of our Lord one thousand nine hundred and seventy-four.

Present: The Honorable Robert J. Danhof, Presiding Judge; John Fitzgerald, Daniel Walsh, Judges.

In this cause an application for rehearing has been filed by Plaintiff-Appellee and an answer in opposition thereto having been received, and due consideration thereof having been had by the Court,

It Is Ordered that the application for rehearing be, and the same is hereby Denied.

Judge Fitzgerald not participating.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 11th day of March in the year of our Lord one thousand nine hundred and seventy-four.

/s/ Ronald L. Dzierbicki,
Clerk.

APPENDIX C

ORDER OF THE MICHIGAN SUPREME COURT DENYING APPLICATION FOR LEAVE TO APPEAL

(State of Michigan—Supreme Court)

(Filed June 27, 1974)

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 27th day of June in the year of our Lord one thousand nine hundred an seventy-four.

Present: The Honorable Thomas M. Kavanagh, Chief Justice; Thomas G. Kavanagh, John B. Swainson, G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, Associate Justices.

On order of the Court, the application for leave to appeal is considered, and the same is hereby Denied, because the appellant has failed to persuade the Court that the question presented should be reviewed by this Court.

Coleman, J., would grant leave.

J. W. Fitzgerald, J., not participating.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereto set my hand and affixed the seal of said Supreme Court at Lansing, this 28th day of June in the year of our Lord one thousand nine hundred and seventy-four.

/s/ Corbin R. Davis,
Deputy Clerk.

APPENDIX D

ORDER OF THE MICHIGAN SUPREME COURT DENYING APPLICATION FOR RECONSIDERATION OF DENIAL OF LEAVE TO APPEAL

(State of Michigan—Supreme Court)

(Filed August 28, 1974)

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of August in the year of our Lord one thousand nine hundred and seventy-four.

Present: The Honorable Thomas M. Kavanagh, Chief Justice; Thomas G. Kavanagh, John B. Swainson, G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, Associate Justices.

On order of the Court, the motion by plaintiff and appellant for reconsideration of this Court's order of June 27, 1974, is considered and the same is hereby Denied, because it does not appear that said order was entered erroneously.

J. W. Fitzgerald, J., not participating.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 28th day of August in the year of our Lord one thousand nine hundred and seventy-four.

/s/ Corbin R. Davis,
Deputy Clerk.